

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

THOMAS BURRELL

PLAINTIFF

V.

NO. 4:17-CV-170-DMB-RP

ANGELA WELTING, et al.

DEFENDANTS

ORDER

On September 27, 2018, Thomas Burrell filed an “Appeal from Magistrate’s Ruling” in which he challenges United States Magistrate Judge Roy Percy’s September 13, 2018, order¹ striking his second amended complaint.² Doc. #81.

“A party may serve and file objections to the order [of a magistrate judge] within 14 days after being served with a copy The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a); *see* L.U. Civ. R. 72(a)(1)(B) (“No ruling of a magistrate judge ... will be reversed, vacated, or modified on appeal unless the district judge determines that the magistrate judge’s findings of fact are clearly erroneous, or that the magistrate judge’s ruling is clearly erroneous or contrary to law.”).

In striking Burrell’s second amended complaint, Judge Percy explained that it was filed “[w]ithout any consent from defendants or leave from the court” and that Burrell therefore failed to comply with Federal Rule of Civil Procedure 15. Doc. #79 at 1. Burrell argues Judge Percy’s order should be set aside because he had previously filed a motion for an extension of time to file

¹ Doc. #79.

² Judge Percy granted the motion to strike filed by Wayne Carlisle and Wayne Carlisle Farms, *see* Doc. #73, who are no longer parties to this action, *see* Doc. #102.

his second amended complaint and did not receive Judge Percy's order denying that motion. Doc. #81 at 1–2.

Burrell has not appealed Judge Percy's order denying his motion for an extension of time. And, the fact remains that Burrell filed his second amended complaint without leave in violation of Rule 15. Under these circumstances, the Court finds that Judge Percy's order striking the second amended complaint was neither clearly erroneous nor contrary to law. Accordingly, Burrell's appeal [81] is **DENIED**.

SO ORDERED, this 18th day of September, 2019.

/s/Debra M. Brown
UNITED STATES DISTRICT JUDGE